

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of )  
 )  
Application by SBC Communications Inc., )  
Nevada Bell Telephone Company, and ) WC Docket No. 03-10  
Southwestern Bell Communications Services, )  
Inc. for Provision of In-Region, InterLATA )  
Services in Nevada )

REPLY AFFIDAVIT OF J. GARY SMITH

REGARDING THE STATUS OF LOCAL EXCHANGE COMPETITION

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SCHEDULE OF ATTACHMENTS

- Attachment A** WorldCom July 29, 2002 Press Release from Webpage.
- Attachment B** Leap Wireless Dec. 11, 2002 Press Release from Webpage.
- Attachment C** PUCN Instructions and Form for Telecom Relay Surcharge
- Attachment D** Cricket 3rd and 4th Quarter 2002 Telecom Relay Surcharge filings
- Attachment E** Analysis of ATG Facilities-Based Residential White Page Listings

I, J. GARY SMITH, being of lawful age and duly sworn upon my oath, do hereby depose and state as follows:

### **INTRODUCTION**

1. My name is J. Gary Smith. I am the same J. Gary Smith that previously filed an Affidavit Regarding the Status of Local Exchange Competition in this docket on January 14, 2003, in support of Nevada Bell's Application.<sup>1</sup> This affidavit replies to the Comments filed in this proceeding by WorldCom, Inc. – the only party to assert that Nevada Bell has failed to demonstrate compliance with Track A under 47 U.S.C. § 271(c)(1)(A).<sup>2</sup>

### **BUSINESS MARKET ENTRY**

2. It is first worth noting what is not in dispute. No party – including WorldCom – has challenged Nevada Bell's showing with respect to local competition in the business market. Indeed, as my opening affidavit demonstrated, CLECs have captured over 20% of that lucrative market – with a substantial majority of the lines served by facilities-based providers.

### **RESIDENTIAL MARKET ENTRY**

3. WorldCom is the only party to challenge Nevada Bell's Track A showing with respect to local competition in the residential market. Although I will address Worldcom's comments in detail below, it is essential that this Commission not lose site of the bigger picture in

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<sup>1</sup> See Affidavit of J. Gary Smith attached to Application by SBC Communications Inc., Nevada Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in Nevada, WC Docket No. 03-10 (FCC filed Jan. 14, 2003) (App. A, Tab 19).

<sup>2</sup> See Comments Of WorldCom, Inc. On The Application By SBC For Authorization To Provide In-Region, InterLATA Services In Nevada at 1-7, Application by SBC Communications Inc., Nevada Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in Nevada, WC Docket No. 03-10 (FCC filed Feb. 4, 2003) ("WorldCom Comments").

considering these comments. As I candidly stated in my opening affidavit, competition for residential customers in Nevada Bell’s local service territory has not yet developed to the same extent as competition for business customers. But that does not change the fact that where carriers have chosen to compete in the residential market – through UNE-P, resale and broadband PCS – they have been able to do so.<sup>3</sup>

#### **UNE-P**

4. WorldCom first challenges Nevada Bell’s reliance on my opening affidavit, which established that as of November 2002, Nevada Bell was providing 28 UNE-P access lines for residential service. WorldCom summarily argues that those lines do not reflect a “commercial alternative.”<sup>4</sup> WorldCom goes on to argue that it has contacted \*\*\*  
\*\*\*, the carrier at issue, and further argues that the carrier is not offering local service. I will address these arguments in reverse order.
5. First, notwithstanding its unsupported assertion regarding its “contact” with the carrier at issue, WorldCom is simply wrong if it is suggesting that these UNE-P lines do not exist.<sup>5</sup>

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<sup>3</sup> As an initial matter, I note that WorldCom generically criticizes Nevada Bell for treating as confidential the identity of the carrier providing residential service via UNE-P as well as the carrier providing resold residential service in addition to facilities-based business service. This criticism is ridiculous. WorldCom well-knows that Nevada Bell has kept the identity of the carriers confidential solely to avoid public disclosure of those carriers’ line counts. This data isn’t treated as confidential for Nevada Bell’s benefit – it is treated as confidential for the protection of the CLECs. Had the information not been treated confidentially, Nevada Bell may have been accused of improperly disclosing specific carrier information – indeed WorldCom would likely have been the first party to complain. In any event, the information was obviously made available under the protective order and WorldCom clearly took advantage of access to the information.

<sup>4</sup> WorldCom Comments at 2. I note that as of January 2003, the number of UNE-P lines has decreased to 24.

<sup>5</sup> WorldCom’s rhetoric is particularly vile when it appears to claim that evidence I presented in my opening affidavit regarding UNE-P and resold residential service is “untrue.” See id. at 7 & n.13. It is WorldCom, however, that should check its facts. As for WorldCom’s reference to “misstatements in its state case,” these appear to relate to several residential facilities-based numbers CLECs had entered into the E911 database. These lines were initially presented by Nevada Bell as facilities-based residential lines in the state proceeding. During the proceeding, however, the CLECs claimed that the lines were in fact business listings that the CLECs had erroneously entered into the residential database. Accordingly, because Nevada Bell had no way to verify or dispute that, Nevada Bell dropped reliance upon those listings. Notably, two of those lines still remain in the residential E911 database – the CLEC still has not bothered to correct them.

These are actual UNE-P lines that Nevada Bell is provisioning and that \*\*\* is utilizing to provide local residential service. WorldCom presents no evidence to the contrary. Instead, WorldCom seems to be focusing on whether the carrier at issue is “offering” or “marketing” its local service in Nevada. But again, Nevada Bell has no control over CLECs’ current business and marketing plans. Whatever those plans may be, this Commission has previously made clear that qualification for Track A is not dependent on whether a competing provider is soliciting or accepting new customers.<sup>6</sup>

6. As for WorldCom’s argument that the UNE-P lines do not represent a “commercial alternative,”<sup>7</sup> I simply disagree. Although I recognize that the Commission has interpreted the statute to require a showing that CLECs are serving more than a *de minimis* number of residential customers, the Commission has consistently dismissed the notion that Track A compliance requires any particular showing of market share.<sup>8</sup> Whether the UNE-P lines at issue are more than *de minimis* is obviously subjective under any circumstances – and that is particularly so given Nevada Bell’s small market. Nevertheless, I continue to believe that these lines represent more than a *de minimis* number of customers and demonstrate that CLECs can serve residential customers utilizing UNE-P where they choose to do so.

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<sup>6</sup> See Memorandum Opinion and Order, Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996, to Provide In-Region, interLATA Services in Arkansas and Missouri, 16 FCC Rcd 20719, ¶ 119 (2001) (rejecting arguments that a competing provider must necessarily be accepting new customers in order to qualify for Track A).

<sup>7</sup> WorldCom Comments at 2.

<sup>8</sup> See, e.g., Memorandum Opinion and Order, Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region InterLATA Services in Vermont, 17 FCC Rcd 7625, ¶ 10 (2002).

**RESOLD LINES**

7. WorldCom next challenges Nevada Bell’s reliance on the evidence in my opening affidavit that \*\*\* is providing resold residential service in addition to facilities-based business service.<sup>9</sup> Once again, WorldCom is mistaken. And once again, WorldCom presents no evidence to the contrary. \*\*\* is indeed providing resold service to residential customers as outlined in my opening affidavit. WorldCom may again be confusing the concept of “providing” service with the concept of “soliciting” or “offering” service – CLEC business decisions over which Nevada Bell has no control. Notably, even WorldCom is forced to admit that the Commission’s precedents indicate that Track A could be satisfied by a CLEC who provides residential service via resale when it also provides business service via its own facilities.<sup>10</sup> Although I will leave the argument regarding the legal standard to the Brief, I simply note that I believe the Commission’s precedent on this issue is far clearer than WorldCom would choose to admit.
8. Moreover, there is significant evidence that this carrier is also providing *facilities-based* residential service – which WorldCom appears to concede.<sup>11</sup> As noted in Attachment D to my opening Affidavit, \*\*\* has entered approximately 40 facilities-based residential lines in the white page database but has entered these as business listings in the E911 database. In light of WorldCom’s criticisms, and through further investigation, Nevada Bell has confirmed that \*\*\* clearly appears to be providing residential service to at least 20 of these customers. Indeed, Nevada Bell’s investigation demonstrates that these

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<sup>9</sup> WorldCom Comments at 2.

<sup>10</sup> Id. at 3.

<sup>11</sup> Id. at 3 n.5 (noting that the CLEC explains to inquirers that it is willing to sell its business service “to anyone willing to buy them” and this somehow explains the appearance of some residential listings in the white pages).

customers have disconnected previously existing Nevada Bell residential service at the addresses in question – all of which are *residential homes* located in *residential neighborhoods*.<sup>12</sup> Thus, no matter how the carrier may designate these lines in the E911 database, it appears that, in fact, these lines are being used to provide service to residential customers.

9. Finally, WorldCom says that Nevada Bell stretches the law by arguing that pure resellers may satisfy a BOC's Track A obligation and further that "the modest number of lines sold by pure resellers does not show the existence of an actual competitive alternative."<sup>13</sup> Again, this is largely a legal issue that will be addressed in the Brief. However, I note that WorldCom does not challenge Nevada Bell's evidence that there are over 1,300 resold residential lines in Nevada Bell's local service territory – more than a *de minimis* number under any conceivable standard. I also disagree with WorldCom's assertion that Nevada Bell has stretched the law on this issue. Indeed, I believe the Commission was clear on this issue when it previously wrote:

We note, however, that reading the statutory language to require that there must be facilities-based service to both classes of subscribers to meet Track A could produce anomalous results, *and there appear to be overriding policy considerations that lead to a contrary construction of the statutory language*. In particular, if all other requirements of section 271 have been satisfied, *it does not appear to be consistent with congressional intent to exclude a BOC from the in-*

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<sup>12</sup> See Attachment E.

<sup>13</sup> WorldCom Comments at 3-4.

*region, interLATA market solely because the competitor's service to residential customers is wholly through resale.*<sup>14</sup>

## BROADBAND PCS

10. WorldCom next takes issue with Nevada Bell's evidence regarding broadband PCS

competition. Ironically, although WorldCom admits that the "Commission has held that

BOC applicants may rely on the presence of a PCS provider to satisfy Track A,"<sup>15</sup>

WorldCom nevertheless chooses to ignore this reality by arguing at length regarding alleged

"technical limitations" inherent with broadband PCS.<sup>16</sup> WorldCom's argument, at bottom, is

that broadband PCS shouldn't qualify for Track A – notwithstanding the Commission's

unambiguous precedent to the contrary.<sup>17</sup> It seems to me that WorldCom would do well to

heed its own statement that "it is late in the 271 process to be seeking new standards."<sup>18</sup>

11. Presumably recognizing the futility of its argument that broadband PCS can't satisfy Track

A, WorldCom offers a brief challenge to Nevada Bell's evidence regarding Leap/Cricket.<sup>19</sup>

The primary thrust of this challenge is that Nevada Bell's reliance upon "press releases and

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<sup>14</sup> Memorandum Opinion and Order, Application of BellSouth Corp. et al., for Provision of In-Region, InterLATA Services in Louisiana, 13 FCC Rcd 20,599, ¶ 48 (1998) ("Second Louisiana Order") (emphasis added). See also Memorandum Opinion and Order, Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, interLATA Services in Kansas and Oklahoma, 16 FCC Rcd 6237, ¶ 43 n.101 (2001) ("Based on the totality of circumstances presented by this application, and based on our conclusions regarding checklist compliance, we likely would not have denied this application on 'Track A' grounds, and *would have relied on the existence of competitor's service to residential customers through resale.*") (emphasis added).

<sup>15</sup> WorldCom Comments at 5. (citing the Second Louisiana Order).

<sup>16</sup> Id. at 6.

<sup>17</sup> See Second Louisiana Order ¶ 25.

<sup>18</sup> WorldCom Comments at 4.

<sup>19</sup> As noted in paragraph 15 of my opening affidavit, Cricket Communications, Inc. is a subsidiary of Leap Wireless International, Inc., and operates in the Reno, Sparks and Carson City markets in Nevada, an area that falls almost entirely – if not entirely – within Nevada Bell's local service territory. In this affidavit, I will refer to the competitor as Leap/Cricket.

other advocacy materials of Cricket and its parent” is somehow misplaced. Of course, WorldCom’s muted complaint begs the question: If the Commission should not rely upon the statements of Nevada Bell’s competitors, then what should it rely upon? Moreover, WorldCom does not attempt to call into question the veracity of Leap/Cricket’s statements. Accordingly, the evidence Nevada Bell has provided in regard to Leap/Cricket stands entirely un rebutted.<sup>20</sup>

12. Argue as it might, WorldCom has not presented a shred of evidence to rebut Nevada Bell’s reliance upon Leap/Cricket’s broadband PCS service. WorldCom’s argument instead appears to be that Nevada Bell somehow hasn’t shown enough. WorldCom is mistaken. The Second Louisiana Order did not establish any litmus test for competitive evidence based on broadband PCS providers. As set forth in paragraph 14 of my opening affidavit, in that order the Commission merely provided guidance on evidence a BOC “*could* include” on this issue.
13. In any event, my opening affidavit provided *each* type of evidence the Commission identified as probative in the Second Louisiana Order. My affidavit provided specific “[e]vidence of marketing efforts” by Leap/Cricket which are “designed to induce” replacement of landline phones. Noting that the Commission believed “[t]he most persuasive evidence concerning competition between PCS and wireline local telephone service is evidence that customers are actually subscribing to PCS in lieu of wireline service at a particular price,” paragraphs 15-

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<sup>20</sup> Maybe the most astounding argument presented by WorldCom is that the Commission should somehow discount evidence regarding Leap/Cricket because its future is “somewhat uncertain” – based upon its recent delisting from NASDAQ. See WorldCom Comments at 6. I find it more than passing ironic that WorldCom, who has filed for bankruptcy protection and who itself was delisted from NASDAQ in July 2002, is now complaining about the viability of Leap/Cricket based upon its NASDAQ delisting. See Attachment A. In any event, whatever Leap/Cricket’s future may be, it is certainly a competitor in the current market. Indeed, the very press release WorldCom relies upon quotes Leap’s Chairman as confirming the decision “will not affect our day-to-day operations and does not change our strategic focus.” See Attachment B. Moreover, information Leap has filed with the Public Utilities Commission of Nevada (“PUCN”) for the third and fourth quarters of 2002 demonstrates that it continues to increase its subscriber base in Nevada. See ¶ 15 & n.23 below.

21 of my opening affidavit describe in detail Leap/Cricket's success in this regard. And although WorldCom criticizes the use of Leap/Cricket's own public statement, I continue to believe the use of Leap/Cricket's public statements should be viewed as exceptionally probative evidence. Leap/Cricket is the party that says it is a "landline replacement." See opening affidavit ¶¶ 15-16. Leap/Cricket is the party that advertises in Reno by asking, "is it a home phone or a mobile phone?" See opening affidavit ¶ 17. And Leap/Cricket is the party who commissioned a study that found that "more than 26% of its Cricket customers say they do not have a traditional phone at home." See opening affidavit ¶ 18.<sup>21</sup>

14. The fact is, it is difficult to understand why WorldCom believes Leap/Cricket's own public statements should be viewed as suspect. Indeed, Nevada Bell's reliance on Leap/Cricket should come as no surprise given that Leap/Cricket has been identified by this Commission as its prime example for wireline replacement competition in each of the Commission's two most recent reports on the CMRS industry.<sup>22</sup>

15. Moreover, the calculations I presented in my opening affidavit regarding Leap/Cricket were extremely conservative. I initially estimated that Leap Cricket served approximately 9,100 residential customer's in Nevada Bell's serving area (based upon the approximate number of Nevada Bell residential access lines in Reno, Sparks and Carson City – 151,800 – multiplied by Leap/Cricket's publicly-stated market coverage after first year of service – 6%). I have

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<sup>21</sup> According to Leap/Cricket, the study by an independent research firm has a margin of error of plus or minus 1.1 percent. See opening affidavit, Att. E. Accordingly, it is apparent that the study followed statistical sampling methods.

<sup>22</sup> See Sixth Report, Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993: Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, 16 FCC Rcd 13350, 13382 (2001) (citing Leap/Cricket as primary example of wireless alternative to traditional wireline service); Seventh Report, Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, 17 FCC Rcd 12985, 13018 (2002) (same).

since learned, however, that this number was likely understated by over 6,000 lines.<sup>23</sup> Thus, applying Leap/Cricket's own market study to Leap/Cricket's own Nevada line counts, my estimates of wireline replacement are shown to have been very conservative. Indeed, even assuming Leap/Cricket's wireline replacement in the Nevada market were only a small fraction of the 26% indicated by its study, it would not alter the indisputable conclusion reached in my opening affidavit – that Leap/Cricket's broadband PCS service is directly competing with Nevada Bell in the residential telephone service market in Nevada Bell's service territory and that Leap/Cricket is serving more than a *de minimis* number of residential customers as a complete substitute for wireline service.<sup>24</sup>

16. That conclusion is supported by the Affidavit of Keith Frederick filed concurrently with my reply affidavit. Mr. Frederick's affidavit describes a survey -- commissioned by Nevada Bell and conducted by the polling firm FrederickPolls -- which provides further evidence of Leap/Cricket's competitive presence in the residential market in Nevada. The

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<sup>23</sup> It is my understanding that, pursuant to Nevada Revised Statute 703.360 and Nevada Administrative Code 707.020, all Nevada telephone companies are required to collect from their customers a surcharge to fund the dual-relay system (which is available to individuals who are deaf or have severely impaired speech or hearing) and to remit those funds to the state. Telephone companies must file quarterly reports with the PUCN identifying the number of lines in service during the quarter. The PUCN instructions for completing the "Surcharge for Assistance to Persons with Impaired Speech or Hearing Report Form" appear on its Internet site at: <http://puc.state.nv.us/admin/tdd/tdd.htm> and are attached to this Affidavit as Attachment C. Because the report covers three months and the surcharge is applied as a monthly fee (of \$.08/line), the total number of lines reported equals the number of lines in service in each of the three months cumulatively. Thus, to determine the average number of lines in service during the quarter, you must divide the total number of lines reported by three. The reports filed by Cricket for the third and fourth quarters of 2002 are attached to this Affidavit as Attachment D. The third quarter report reflects a total of 38,325 lines, which indicates an average of 12,775 lines during the quarter. The fourth quarter report was not completed using the PUCN form and the dollar amounts reflected on its form appear to reference lines, not dollars, because tax is applied on per line basis (i.e., \$.08 per line per month), not on revenue. That report reflects a total of 46,038 lines, which indicates an average of 15,346 lines during the quarter.

<sup>24</sup> Again, discounting completely Leap/Cricket's own independent study showing that 26% of its customers do not have a traditional phone at home -- and there is absolutely no reason to discount that evidence as no party has presented any evidence to rebut it -- it is beyond reason to assume that not even 1% of Leap/Cricket's customers (which would be over 150) have not replaced their wireline residential service. Leap/Cricket's marketing strategy alone -- along with just a dash of common sense -- compels such a conclusion. And in my opinion, even 150 such customers would demonstrate that Leap/Cricket is providing competing service to more than a *de minimis* number of customers.

survey demonstrates that, using an extremely conservative definition of “replacement” – based upon Leap/Cricket customers who chose to disconnect their residential wireline telephone service based on their decision to subscribe to Leap/Cricket service – more than 2,800 subscribers in the Reno, Sparks and Carson City market are using Leap/Crickets’ broadband PCS service to replace Nevada Bell’s residential wireline service.<sup>25</sup> In light of this further support for my previous conclusion, there can simply be no question but that Leap/Cricket’s broadband PCS service meets the very standard to which WorldCom points: The service is being used “to replace wireline service” – and not as simply a supplement.<sup>26</sup>

## **CONCLUSION**

17. WorldCom’s arguments do absolutely nothing to call into question the evidence presented in my opening affidavit. The unrebutted facts are that CLECs have ordered and are providing more than a *de minimis* number of facilities-based and resold residential lines to their customers. Moreover, the evidence is unrebutted that Leap/Cricket is providing broadband PCS service to more than a *de minimis* number of customers who have replaced their wireline residential service. In short, as I previously concluded, the local market in Nevada Bell’s local service territory is open to competition and competitors are competing in the market. Accordingly, Nevada Bell has met its obligations under Section 271(c)(1)(A).

18. This concludes my affidavit.

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<sup>25</sup> Leap/Cricket’s 2,800 subscribers alone would represent approximately a 1.2% share of the residential market in Nevada Bell’s serving area. When added to competitors’ residential resold and UNE-P lines, the total lines served by competitors would be approximately 4,100, representing approximately a 1.7% share of the residential market in Nevada Bell’s serving area.

<sup>26</sup> WorldCom Comments at 5.

STATE OF TEXAS       )  
                                  )  
COUNTY OF DALLAS    )

I declare under penalty of perjury that the foregoing is true and correct.

J. Gary Smith  
J. Gary Smith

Subscribed and sworn to before me this 11 day of Feb, 2003

Laura Munos  
Notary Public



**J.G. Smith Reply Affidavit – Attachment A**

<http://www.worldcom.com/global/about/news/news2.xml?newsid=28&mode=long&lang=en&width=530&root=/global/about/&langlinks=off>



## WorldCom, Inc. Announces Delisting by Nasdaq of its Securities

CLINTON, Miss., July 29, 2002 - WorldCom, Inc. (WCOEQ, MCWEQ) today announced that a Nasdaq Listing Qualifications Panel had issued a written decision that, based on WorldCom's recent bankruptcy filing and the pending restatement of its financial statements for 2001 and the first quarter of 2002, WorldCom's WorldCom Group Common Stock, MCI Group Common Stock and 8% Cumulative Quarterly Income Preferred Securities, Series A, would be delisted from the Nasdaq Stock Market effective as of the opening of trading on July 30, 2002. WorldCom expects that its securities will trade on the Pink Sheets under the symbols WCOEQ, MCWEQ and MCPEQ following the delisting by Nasdaq.

### About WorldCom, Inc.

WorldCom, Inc. (WCOEQ, MCWEQ) is a pre-eminent global communications provider for the digital generation, operating in more than 65 countries. With one of the most expansive, wholly owned IP networks in the world, WorldCom provides innovative data and Internet services for businesses to communicate in today's market. In April 2002, WorldCom launched [The Neighborhood](#) built by MCI - the industry's first truly any-distance, all-inclusive local and long-distance offering to consumers for one fixed monthly price. For more information, go to <http://www.worldcom.com>.

[Click here](#) for frequently asked questions concerning the status of the WorldCom securities.

- 29 July, 2002

### PR Contact:

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**Role:** WorldCom Investors  
**Tel:** 877-624-9266  
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### PR Contact:

**Name:** News Bureau  
**Role:** Media Relations  
**Tel:** 800-644-NEWS

**J.G. Smith Reply Affidavit – Attachment B**



[Printable Version](#)

**Leap Receives Decision From NASDAQ Listing Qualifications Panel To Delist Its Common Stock**  
*~ Common Stock Anticipated to Move to the OTC Bulletin Board ~*

SAN DIEGO - Dec. 11, 2002 - Leap Wireless International, Inc. (NASDAQ: LWIN), an innovator of wireless communications services, today announced that it has been informed the NASDAQ Listing Qualifications Panel has denied the Company's request for continue listing on the NASDAQ National Market and that the Leap's common stock will be delisted effective upon the open of business day, December 11, 2002. The Panel affirmed the previously announced NASDAQ Staff Determination Notice but expressly decided not to cite the previously announced public interest concerns as a basis for its determination.

"This decision will not affect our day-to-day operations and does not change our strategic focus," said Harvey P. White, Leap's Chairman and CEO. "While we are obviously disappointed with the Panel's decision, we expect to move forward with our plans to restructure the outstanding indebtedness of both Leap and Cricket in order to create a stronger company better positioned for the future."

Leap's common stock may be eligible to trade on the OTC Bulletin Board (OTCBB), and the Company expects that it will be traded on the OTCBB or other quotation service.

**About Leap**

Leap, headquartered in San Diego, Calif., is a customer-focused company providing innovative communications services for the mass market. Leap pioneered a wireless service that lets customers make all their local calls from within their local calling area and receive calls from anywhere for one low, flat rate. Leap has begun offering new services designed to further transform wireless communications for consumers. For more information, please visit [www.leapwireless.com](http://www.leapwireless.com).

###

**Leap Wireless International Contacts:**

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 1-858-882-6084 (ph) 1-619-882-6030 (fax)  
[jseines@leapwireless.com](mailto:jseines@leapwireless.com)

**Bock Communications, Inc.**

Jessica Levy, Media Relations  
 1-714-540-1030 (ph) 1-714-540-1060 (fax)  
[jlevy@bockpr.com](mailto:jlevy@bockpr.com)

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**J.G. Smith Reply Affidavit – Attachment C**

KENNY C. GUINN  
*Governor*

**STATE OF NEVADA**  
**PUBLIC UTILITIES COMMISSION OF NEVADA**

1150 East William Street  
Carson City, Nevada 89701-3109  
Policy (775) 687-6007 Fax (775) 687-6110  
Staff (775) 687-6001 Fax (775) 687-6120  
<http://puc.state.nv.us>

RURAL NEVADA  
557 W. Silver Street, No. 205B  
Elko, Nevada 89801  
(775) 738-4914 Fax (775) 778-6928



SOUTHERN NEVADA OFFICE  
101 Convention Center Dr., Suite 250  
Las Vegas, Nevada 89109  
(702) 486-2600 Fax (702) 486-7206

May 29, 2002

**RE: 2002 - 2003 Surcharge for Assistance to Persons with Impaired Speech or Hearing**

Dear Public Utility:

Pursuant to Nevada Revised Statute 707.360 and Nevada Administrative Code 707.020, please complete the enclosed report form, have it notarized and return it to the Commission quarterly with your remittance. Quarterly reporting was mandated by the Commission in Docket No. 90-549 (Order issued 11/29/90). Reporting dates and due dates are listed on the report form.

The surcharge rate for fiscal year 2002-2003 is \$0.08 per month on each access line of each customer to the local exchange of any telephone company providing such lines in this state.

Please send your report form and remittance to:

Public Utilities Commission of Nevada  
Attn: Fiscal Services  
1150 E. William Street  
Carson City NV 89701-3109

Should you have any questions regarding these requirements, please contact Phyllis Carpenter, Accountant, at 775/687-6099. Thank you.

Sincerely,

Crystal Jackson  
Commission Secretary

**PUBLIC UTILITIES COMMISSION OF NEVADA**

***Surcharge for Assistance to Persons with Impaired Speech or Hearing Report Form***

Company Name: \_\_\_\_\_  
Company Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Preparer Name: \_\_\_\_\_  
Preparer Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

Report for the Quarter Ending: \_\_\_\_\_

Number of Lines \_\_\_\_\_ multiplied by \$0.08 (Rate per Line) = \$ \_\_\_\_\_

Plus Interest Income (pursuant to NAC 707.040) \$ \_\_\_\_\_

**Total Remittance** \$ \_\_\_\_\_

Remittance Address: Public Utilities Commission of Nevada  
ATTN: Fiscal Services  
1150 E. William Street  
Carson City NV 89701-3109

<u>Reporting Period</u>	<u>Remittance Due Date</u>
July 1, 2002 – September 30, 2002	October 31, 2002
October 1, 2002 – December 31, 2002	January 31, 2003
January 1, 2003 – March 31, 2003	April 30, 2003
April 1, 2003 – June 30, 2003	July 31, 2003

\_\_\_\_\_  
Name and title of company official responsible for preparation of this report:

\_\_\_\_\_  
Name and Title (print or type) Signature

\_\_\_\_\_  
Name and title/affiliation of non-company person preparing this report (if applicable):

\_\_\_\_\_  
Name and title/affiliation (print or type) Signature

\_\_\_\_\_  
Subscribed to and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_:

\_\_\_\_\_  
Notary Public

**J.G. Smith Reply Affidavit – Attachment D**

PUBLIC UTILITIES COMMISSION OF NEVADA

Surcharge for Assistance to Persons with Impaired Speech or Hearing Report Form

Company Name: Cricket Communications, Inc.  
Company Address: 10307 Pacific Center Court  
San Diego, CA 92121  
Telephone: (858) 882-6186  
Preparer Name: Tony Schilens  
Preparer Company: Cricket Communications, Inc.  
Address: 10307 Pacific Center Court  
San Diego, CA 92121  
Telephone: (858) 882-6186

02 NOV 25 01:43

CKT

Report for the Quarter Ending: September 30, 2002

Number of Lines 38,325 multiplied by \$0.08 (Rate per Line) = \$ 3,066

Plus Interest Income (pursuant to NAC 707.040) \$ 12

Total Remittance \$ 3,078

Remittance Address: Public Utilities Commission of Nevada  
ATTN: Fiscal Services  
1150 E. William Street  
Carson City NV 89701-3109

Reporting Period	Remittance Due Date
July 1, 2002 – September 30, 2002	October 31, 2002
October 1, 2002 – December 31, 2002	January 31, 2003
January 1, 2003 – March 31, 2003	April 30, 2003
April 1, 2003 – June 30, 2003	July 31, 2003

Name and title of company official responsible for preparation of this report:

Tony Schilens, Tax Director  
Name and Title (print or type)

  
Signature

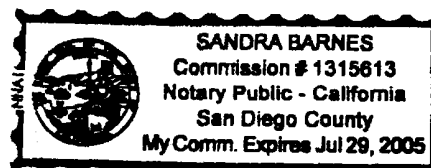
Name and title/affiliation of non-company person preparing this report (if applicable):

Name and title/affiliation (print or type)

Signature

Subscribed to and sworn before me this 14 day of November, 2002:

  
Notary Public



CRICKET COMMUNICATIONS

DATE 21-NOV-02  
VENDOR NUMBER: 21571

No. 148221

VENDOR NAME PUBLIC UTILITIES COMMISSION OF N

INVOICE NO.	INVOICE DESCRIPTION	INV. DATE	DISCOUNT	NET AMOUNT
1ST QTR PTMT-2002		13-NOV-02	0.00	3,078.00
PLEASE DETACH AND RETAIN THIS STATEMENT AS YOUR RECORD OF PAYMENT.			0.00	3,078.00

STATE OF NEVADA  
PUBLIC UTILITIES COMMISSION OF NEVADA  
1150 E. William Street  
Carson City, Nevada 89701-3109

No. 30189

RECEIPT

Received from

Date 11/25/02

CRICKET COMMUNICATION, INC  
10307 PACIFIC CENTER COURT  
SAN DIEGO, CA 92121-2779

AMOUNT

\$ 3,078.00

THREE THOUSAND SEVENTY EIGHT ----- and 00/100 Dollars

How Paid	Cash	Check	Money Order	Draft
	<input type="checkbox"/>	148221		

Type of Receipt	Filing Fee	TDD	Copy Service	UEC	Mill Assessment	Other
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
GL	3717	cc: DETR ✓	3818	3% to 3305 97% to LIHEA cc: Welfare	3315 4548	

Invoice#:

Memo

TDD:

Received by SV

Fiscal Copy

**Public Utilities Commission of Nevada, NV**  
**Nevada Telecom Relay Services Surcharge**  
**Reporting Period: October 1, 2002 to December 31, 2002**

FEIN: 330879924

Cricket Communications, Inc

Cricket Communications, Inc.

c/o Tax Partners, L.L.C.

3100 Cumberland Boulevard, Suite 900

Atlanta, GA 30339

(877) 829-4141 - Phone

(770) 956-0700 - Fax

Tax Identification Number

Return Due: January 20, 2003

Gross Sales	\$46,038.00
Less: Tax Exempt Sales	\$0.00
Net Sales Subject to Tax	\$46,038.00
Tax Rate	8%
Gross Tax	\$3,683.04
Less: Vendor's Compensation	\$0.00
Less: Tax Credits	\$0.00
Net Tax Amount to be Remitted	\$3,683.04

*Wednesday Warford*

1/16/2003

Wednesday Warford, Attorney-in-Fact

Date

*I hereby declare that all information provided herein is true, complete and accurate to the best of my knowledge.*

**REMIT TO:**

Public Utilities Commission of Nevada  
1150 East Williams Street  
Carson City, NV 89701

03 JAN 24 6:11:20

426957

**Nevada TRS**

Reporting Period: October 1, 2002 to December 31, 2002

Cricket Communications, Inc.  
c/o Tax Partners, L.L.C.  
3100 Cumberland Boulevard, Suite 900  
Atlanta, GA 30339

Return Due: January 20, 2003

  
\*002395\*Amount: 3,683.04  
\*NV-ST-TR\*  
\*200212\*

002395 002395 200212 NV\_ST\_TR Q 1/17/2003 10:39:32 AM LSTAFFORD

0000426957

STATE OF NEVADA  
PUBLIC UTILITIES COMMISSION OF NEVADA  
1150 E. William Street  
Carson City, Nevada 89701-3109

No. 30329

RECEIPT

Received from

Date 1/24/03

CRICKET COMMUNICATION, INC  
10307 PACIFIC CENTER COURT  
SAN DIEGO, CA 92121-2779

AMOUNT \$ 3,683.04

THREE THOUSAND SIX HUNDRED EIGHTY THREE ----- and 04/100 Dollars

How Paid	Cash	Check	Money Order	Draft
	<input type="checkbox"/>	426957		

Type of Receipt	Filing Fee	TDD	Copy Service	UEC	Mill Assessment	Other
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
GL	3717	cc: DETR	3818	3% to 3305 97% to LIHEA cc: Welfare	3315 4548	

Invoice#:

Memo

TDD CHARGE

Received by KM

Fiscal Copy

**J.G. Smith Reply Affidavit – Attachment E**

**REDACTED FOR  
PUBLIC INSPECTION**